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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JORDAN OROZCO MADERO and
ESTEBAN OROSCO on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

McLANE FOODSERVICE, INC., a
Texas Corporation, and DOES 1-10,
inclusive,

Defendants.

CASE NO. 5:24-cv-00073-KK-DTB

**DEFENDANT'S MOTION TO
REQUIRE AMENDMENT OF
PLAINTIFFS' FIRST AMENDED
COMPLAINT TO ELIMINATE
PUTATIVE CLASS ACTION
ALLEGATIONS AND/OR FOR AN
ORDER STRIKING THE SAME:**

(1) NOTICE OF MOTION

(2) MEMORANDUM OF POINTS
AND AUTHORITIES

(3) DECLARATION OF MATTHEW
C. KANE

Filed Under Separate Cover:

(4) [PROPOSED] ORDER

Date: February 20, 2025

Time: 9:30 a.m.

Crtrm.: 3

Judge: Hon. Kenly Kiya Kato

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NOTICE OF MOTION

TO THE HONORABLE KENLY KIYA KATO, UNITED STATES DISTRICT JUDGE, AND TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that, on **February 20, 2025, at 9:30 a.m.**, in Courtroom 3 (3rd Floor) of the George E. Brown, Jr. Courthouse, 3470 12th Street, Riverside, CA 92501, Defendant McLane Foodservice, Inc. (“MFS” or “Defendant”) will and hereby does move the Court for an order, pursuant to Fed. R. Civ. P. 23(d)(1)(D) and/or Fed. R. Civ. P. 12(f), that (a) requires Plaintiffs Jordan Orozco Madero and Esteban Orosco (collectively, “Plaintiffs”) to amend their First Amended Complaint (“FAC”) to eliminate their putative class action allegations and/or (b) strikes the same on the grounds that Plaintiffs failed to file a motion for class certification by their deadline to do so.

On August 2, 2024, the Court entered its Civil Trial Scheduling Order (the “Scheduling Order”) [Dkt. #79], in which it set a motion hearing cut-off date of April 17, 2025. However, the Scheduling Order *expressly states* that “[t]he motion hearing cutoff date applies to all nondiscovery motions except: (1) motions for class certification, which shall be filed in accordance with the deadline set forth in the Court’s Civil Standing Order....” Dkt. #79 at 2:5-8 (emph. added). The Court’s Civil Standing Order, in turn, provides that “plaintiff(s) shall file a motion for class certification no later than 100 days from the date of the scheduling conference. This deadline will be continued only upon a showing of due diligence and good cause.” Standing Order at 6:19-23.

On July 19, 2024, the Court vacated the Scheduling Conference in this action, originally scheduled for July 25, 2024. *See* Dkt. #47, #71. Instead, the Court issued its Scheduling Order on August 2, 2024. Dkt. #79. Conservatively using the date on which the Scheduling Order was entered (rather than the date on which the Scheduling Conference was originally scheduled to take place), Plaintiffs’ deadline to file their motion for class certification pursuant Fed. R. Civ. P. 23 (“Rule 23”) was no later than

1 **November 10, 2024.** See Standing Order at 6:19-22. But Plaintiffs did not file a
2 motion for class certification by that date—and, in fact, they did not initiate any
3 required conferral pursuant to L.R. 7-3 for such a motion, nor have they even *initiated*
4 written discovery regarding their individual *or* putative class action claims in this
5 action.¹ Declaration of Matthew C. Kane (“Kane Decl.”), ¶ 7.

6 Under Fed. R. Civ. P. (“Rule”) 23(d)(1)(D), a court may issue an order to
7 “require that the pleadings be amended to eliminate allegations about representation of
8 absent persons and that the action proceed accordingly.” Rule 23(d)(1)(D) allows a
9 court to “give clear definition” to a class action and “determine as early in the
10 proceedings as practicable” whether class allegations can be maintained. Fed. R. Civ.
11 P. 23(3)(1)(D) advisory committee’s note to 1966 amendment. Here, Plaintiffs’
12 deadline to file their motion for class certification expired ***over two months ago***, and
13 their failure to timely move for class certification is, in and of itself, a valid basis to
14 require that their FAC be amended to eliminate the putative class action allegations
15 and/or for the Court to enter an order striking the same. See, e.g., *Burkhalter v.*
16 *Montgomery Ward and Co., Inc.*, 676 F.2d 291 (8th Cir. 1982) (class allegations
17 properly stricken where plaintiff failed to comply with court order setting deadline for
18 filing of motion for class certification).

19 This Motion is made following the required conference of counsel pursuant to
20 Local Rule 7-3. On December 27, 2024, MFS provided Plaintiffs with a letter detailing
21 the grounds on which this Motion would be based and inquiring whether Plaintiffs
22 would agree to amend their FAC to eliminate their putative class action allegations.
23 Kane Decl., Exh. A. However, Plaintiffs refused to amend their FAC and seemingly
24 disputed that their class certification deadline had elapsed. *Id.*, Exh. B. Although on

25 ¹ On January 8, 2025 – only after MFS had sought to confer with Plaintiffs
26 regarding this Motion and while their request for dismissal of this action was pending
27 – Plaintiffs issued a deposition notice to MFS pursuant to Fed. R. Civ. P. 30(b)(6)
28 purporting to notice MFS’s deposition on patently objectionable topics for January 21,
2025. To date, Plaintiffs have never served any written discovery regarding their
putative class action or individual state law claims.

1 January 14, 2025, Plaintiffs' counsel belatedly indicated that Plaintiffs do not intend to
2 pursue their class action claims, they have not proposed a further amended complaint
3 to limit their claims to only individual claims, and on January 8, 2025, they propounded
4 eleventh-hour discovery directed to their putative class action claims and on January
5 14, 2025, reiterated their intent to proceed with that discovery. *Id.*, Exhs. C and D. As
6 such, the Parties were unable to informally resolve the issues raised by this Motion,
7 and thus, MFS proceed with its filing.

8 The Motion is based on this Notice of Motion, the accompanying Memorandum
9 of Points and Authorities and Declaration of Matthew C. Kane (and any exhibits
10 annexed thereto), the Court's file and records in this action, and such other evidence
11 and arguments as may be made or presented at or before the hearing on this Motion.

12
13 Dated: January 17, 2025

BAKER & HOSTETLER LLP

14 By: /s/ Matthew C. Kane

15 Matthew C. Kane
16 Sylvia J. Kim
17 Amy E. Beverlin
18 Kerri H. Sakaue

19 Attorneys for Defendant
20 McLANE FOODSERVICE, INC.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs allege that they are former truck drivers of Defendant McLane Foodservice, Inc. (“MFS”). In their First Amended Complaint (“FAC”), they allege various putative wage and hour class action claims against MFS under California law on behalf of themselves and other putative class members. However, Plaintiffs’ deadline to move to certify their putative class action claims was no later than **November 10, 2024**—and Plaintiffs did not file a motion for class certification by that date. In fact, Plaintiffs did not even initiate any discovery regarding their individual or putative class action claims in this action until they issued a single deposition notice pursuant to Fed. R. Civ. P. (“Rule”) 30(b)(6) on January 8, 2024.

Under Rule 23(d)(1)(D), a court may issue an order to “require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly.” Rule 23(d)(1)(D) allows a court to determine as early as practicable in the proceedings whether class allegations can be maintained. Here, Plaintiffs’ deadline to file their motion for class certification expired ***over two months ago***, and their failure to timely move for class certification is, in and of itself, a valid basis to require that their FAC be amended to eliminate their putative class action allegations and/or for the Court to enter an order striking the same. *See, e.g., Burkhalter v. Montgomery Ward and Co., Inc.*, 676 F.2d 291 (8th Cir. 1982).

For these reasons, as discussed more fully below, Plaintiffs cannot maintain their putative class action allegations. Thus, MFS requests that the Court enter an order pursuant to Rule 23(d)(1)(D) and/or Rule 12(f) that requires Plaintiffs to amend their FAC to eliminate their putative class action allegations and/or strikes the same.

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II. RELEVANT BACKGROUND

A. PROCEDURAL HISTORY

1. Plaintiffs' Complaints And Motion For FLSA Conditional Certification

On January 12, 2024, Plaintiffs filed a putative Class Action Complaint (the "Complaint") against MFS, purporting to allege federal and California law claims for various purported wage and hour violations on behalf of themselves and other putative class and/or collective members ("PCMs"). Dkt. #1. On February 9, 2024, MFS filed a motion to dismiss and/or strike the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and/or 12(f) (the "MTD"). Dkt. #11. On February 12, 2024, Plaintiffs filed a Motion for Conditional Certification of FLSA Claims (the "MCC") directed *solely* to their claim for failure to pay overtime compensation in violation of the Fair Labor Standards Act ("FLSA"). Dkt. #13.

On March 13, 2024, the Court entered its Order (a) granting in part and denying in part MFS's MTD and (b) staying the MCC. Dkt. #23 (the "MCC Order"). With respect to the MCC, the Court agreed with MFS that a dispositive threshold issue as to Plaintiffs' FLSA overtime claim was whether Plaintiffs are interstate drivers exempt from overtime under the federal Motor Carrier Act ("MCA"). *Id.* at 10-11. As such, the Court stayed Plaintiffs' MCC for 120 days to allow Plaintiffs and MFS (collectively, the "Parties") to conduct discovery on the named Plaintiffs' overtime exemption status under the MCA and for MFS to file a motion for partial summary judgment addressing that issue.² *Id.* at 11 ("Plaintiffs' Motion for Conditional Certification is STAYED").

On March 14, 2024, Plaintiffs filed their operative FAC, purporting to allege the following five claims on behalf of themselves and other putative class and/or collective

² On July 17, 2024, while the MCC was stayed, the Parties subsequently stipulated (with the Court's approval) to extend the stay on Plaintiffs' MCC to July 31, 2024, to allow them to complete their discovery efforts related to the threshold issue of Plaintiffs' MCA exemption status. Dkt. #68 (at 2:7-10); *see also* Dkt. #69.

members:

- (1) Failure to pay overtime compensation in violation of the FLSA;
- (2) Failure to pay all wages earned;
- (3) Failure to issue accurate itemized wage statements;
- (4) Failure to reimburse for work expenses; and
- (5) Violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*

See Dkt. #24 (FAC). As Plaintiffs have acknowledged in their filings in this action, their second through fifth putative class action claims are “*additional* state law claims” under the California Labor Code—separate and apart from their putative FLSA overtime claim. *See, e.g.*, Dkt. #64 at 2:3-12 (emph. added).

2. Plaintiffs’ Deadline To Move For Rule 23 Class Certification Of Their California Law Claims Under The Court’s Scheduling Order And Standing Order

On June 5, 2024, the Court issued its Order Setting Scheduling Conference. Dkt. #47. On July 11, 2024, and following the required conference of counsel under Rule 26, the Parties filed their Joint Rule 26 Report of Counsel (the “Joint Report”). Dkt. #64. In its portions of the Joint Report, MFS requested that, pending the Court’s ruling on the stayed MCC and MFS’s then-forthcoming partial summary judgment motion, discovery pertaining to Plaintiffs’ other non-FLSA putative class action claims be stayed except as to discovery pertaining to their individual claims. *See, e.g., id.* at 2:27-3:5. Plaintiffs, on the other hand, stated that they did “not believe phased discovery is necessary or appropriate.” *Id.* at 9:27-28 (emph. added). Plaintiffs further stated that they would “continue with discovery” after issues related to the Parties’ MCC-related discovery were “resolved.”³ *Id.*

On August 2, 2024, the Court entered its Civil Trial Scheduling Order (the “Scheduling Order”). Dkt. #79. The Court did not phase discovery as requested by MFS; instead, it set a single fact discovery cut-off of January 24, 2025. *Id.* at 1, 2:20-3:4. The Court also set a motion hearing cut-off date of April 17, 2025. *Id.* at 1. However, the Scheduling Order *expressly states* that “[t]he motion hearing cutoff date

³ Plaintiffs deemed those issues “resolved” as of **July 31, 2024**. *See* Dkt. #77, #78.

1 applies to all nondiscovery motions except: (1) motions for class certification, *which*
2 *shall be filed in accordance with the deadline set forth in the Court's Civil Standing*
3 *Order....*" Dkt. #79 at 2:5-8 (emph. added).

4 Per the Court's Civil Standing Order, "plaintiff(s) shall file a motion for class
5 certification no later than 100 days from the date of the scheduling conference. This
6 deadline will be continued only upon a showing of due diligence and good cause."
7 Standing Order at 6:19-23.⁴

8 **3. The Court's Grant Of Partial Summary Judgment In Favor Of**
9 **MFS On Plaintiffs' FLSA Claim And OSC Re Subject Matter**
10 **Jurisdiction**

11 On August 22, 2024, MFS filed its Motion for Partial Summary Judgment on
12 Applicability of the FLSA's Motor Carrier Act Overtime Exemption to the Named
13 Plaintiffs (the "MPSJ"). Dkt. #83. On October 17, 2024, the Court entered its Order
14 Granting Defendant's Motion for Partial Summary Judgment, pursuant to which it
15 dismissed Plaintiffs' FLSA unpaid overtime claim with prejudice. Dkt. #97 at 14.

16 Given the Court's dismissal of Plaintiffs' lone federal claim, the Court ordered
17 Plaintiffs to show cause why the Court should retain jurisdiction over this action (the
18 "OSC"). *See id.* Plaintiffs' and MFS filed responses to the Court's OSC. Dkt. #102,
19 #103. Based on the Parties' responses, the Court *discharged* the OSC on October 25,
20 2024, and retained jurisdiction over this action. Dkt. #105.

21 As such, the Court retained subject matter jurisdiction over the only claims that
22 remain pending in this action: Plaintiffs' putative class action and individual claims
23 under state law for failure to (1) pay all wages earned, (2) issue accurate itemized wage
24 statements, and (3) reimburse for work-related expenses and for (4) unfair competition
25 predicated thereon. *See* Dkt. #24.

26
27 ⁴ The Court's Civil Standing Order was initially filed in this action on January
28 19, 2024 [Dkt. #9]. However, on April 25, 2024, the Court entered a text-only order
advising the parties that it had "updated its procedures in civil cases" and directing the
parties to the Court's updated Civil Standing Order available on the Court's website at
<https://www.cacd.uscourts.gov/sites/default/files/documents/KK/AD/KK%20Civil%20Standing%20Order.pdf>. *See* Dkt. #30.

1 **B. PLAINTIFFS NEVER MOVED FOR RULE 23 CLASS CERTIFICATION, NOR**
2 **DO THEY INTEND TO DO SO**

3 On July 19, 2024, the Court vacated the Scheduling Conference in this action,
4 originally scheduled for July 25, 2024. *See* Dkt. #47, #71. Instead, the Court issued
5 its Scheduling Order on August 2, 2024. Dkt. #79.

6 Conservatively using that later date on which the Scheduling Order was entered
7 (rather than the earlier date on which the Scheduling Conference was originally
8 scheduled to take place), Plaintiffs’ deadline to file their motion for class certification
9 pursuant Fed. R. Civ. P. 23 (“Rule 23”) was ***no later than November 10, 2024***. *See*
10 Standing Order at 6:19-22. But Plaintiffs did ***not*** file a motion for class certification
11 by that date—and, in fact, they did not initiate any required conferral pursuant to L.R.
12 7-3 for such a motion, and they have never even *initiated* written discovery regarding
13 their individual *or* putative class action claims in this action. Declaration of Matthew
14 C. Kane (“Kane Decl.”), ¶ 7.

15 On December 27, 2024, MFS sent Plaintiffs a conferral letter pursuant to L.R.
16 7-3 detailing the grounds on which this Motion would be brought. Kane Decl., ¶ 3 &
17 Exh. A. In response, Plaintiffs refused to amend their FAC to dismiss their putative
18 class action allegations based on their wholly unsupported arguments that discovery
19 and Plaintiffs’ class certification deadline were somehow stayed by the Court’s MCC
20 Order—which was issued *before* the Court entered its Order Setting Scheduling
21 Conference and *before* the parties held their required conference of counsel pursuant
22 to Rule 26. *Id.*, Exh. B.

23 On January 6, 2025 – just *6 days* after refusing to amend their FAC to dismiss
24 their putative class action allegations – Plaintiffs filed a Request for Dismissal Without
25 Prejudice Pursuant to Federal Rule of Civil Procedure 41(a)(2) (the “RFD”).⁵ Dkt.

26
27 ⁵ *Two days later*, on January 8, 2025, and only after MFS initiated a conferral
28 with Plaintiffs regarding this Motion and while their RFD was pending, Plaintiffs
issued a deposition notice to MFS pursuant to Fed. R. Civ. P. 30(b)(6) purporting to
notice MFS’s deposition on patently objectionable topics for January 21, 2025. Kane
Decl., ¶ 6 & Exh. C. To date, Plaintiffs have never served any written discovery
regarding their putative class action or individual claims under California law. *Id.*, ¶ 7.

1 #106. On January 7, 2025, MFS filed its response to Plaintiffs’ RFD, arguing that if
2 the Court dismisses Plaintiffs’ state law claims, under the circumstances presented, any
3 such dismissal of Plaintiffs’ individual state law claims should be with prejudice and
4 the issue of attorneys’ fees and costs should be decided by the Court pursuant to
5 applicable law. Dkt. #107. Plaintiffs submitted a “Reply” thereto later that same day,
6 reiterating their desire to dismiss the action, but without prejudice. Dkt. #108. On
7 January 10, 2025, the Court denied Plaintiffs’ RFD and ordered MFS to file this Motion
8 by no later than January 24, 2025. Dkt. #109.

9 On January 14, 2025, Plaintiffs’ counsel changed their tune somewhat, belatedly
10 advising MFS’s counsel that Plaintiffs do not intend to pursue their class action claims.
11 Kane Decl., ¶ 8 & Exh. D. However, Plaintiffs have not proposed a further amended
12 complaint to limit their claims to only individual claims, and, as noted above, on
13 January 8, 2025, they propounded eleventh-hour discovery directed to their putative
14 class action claims and on January 14, 2025, their counsel reiterated their intent to
15 proceed with that discovery. *Id.*

16 **III. PLAINTIFFS SHOULD BE REQUIRED TO AMEND THEIR FAC TO**
17 **ELIMINATE ALL PUTATIVE CLASS ACTION ALLEGATIONS OR**
ALL SUCH ALLEGATIONS SHOULD BE ORDERED STRICKEN

18 **A. THE COURT HAS THE AUTHORITY TO REQUIRE AMENDMENT OF THE**
19 **FAC TO ELIMINATE OR TO STRIKE PLAINTIFFS’ PUTATIVE CLASS**
ACTION ALLEGATIONS THEREFROM

20 Under Rule 23(d)(1)(D), a court may issue an order to “require that the pleadings
21 be amended to eliminate allegations about representation of absent persons and that the
22 action proceed accordingly.” Rule 23(d)(1)(D) allows a court to “give clear definition”
23 to a class action and “determine as early in the proceedings as practicable” whether
24 class allegations can be maintained. Fed. R. Civ. P. 23(3)(1)(D) advisory committee’s
25 note to 1966 amendment. Additionally, Rule 23(c)(1)(A) requires the consideration of
26 class certification issues “at as early practicable time after a person sues or is sued as a
27 class representative[.]” The basis for this rule is obvious: “Fundamental fairness, as
28 well as the orderly administration of justice requires that defendants haled into court

1 not remain indefinitely uncertain as to the bedrock litigation fact of the number of
2 individuals or parties to whom they may ultimately be held liable for money damages.”
3 *McCarthy v. Kleindienst*, 741 F.2d 1406, 1411-12 (D.C. Cir. 1984).

4 Additionally, Fed. R. Civ. P. 12(f) (“Rule 12(f)”) authorizes a court to strike a
5 pleading or any portion thereof on its own motion *at any time*. *See, e.g., Corr. USA v.*
6 *Dawe*, 504 F.Supp.2d 924, 930 (E.D. Cal. 2007) (“The court, however, may make
7 appropriate orders to strike under the rule at any time on its own initiative.”). Under
8 Rule 12(f), the Court may strike “any insufficient defense or any redundant,
9 immaterial, impertinent or scandalous matter.” Fed. R. Civ. P. 12(f). “A motion to
10 strike is properly granted where the plaintiff seeks a form of relief that is not available
11 as a matter of law.” *Rocha v. Yoshinoya W., Inc.*, 2007 WL 8398819, at *6 (C.D. Cal.
12 Jan. 8, 2007) (Morrow, J.) (striking class allegations from complaint for failure to bring
13 timely motion for class certification).

14 **B. PLAINTIFFS CANNOT PURSUE THEIR PUTATIVE CLASS ACTION CLAIMS**
15 **BECAUSE THEY NEVER MOVED FOR RULE 23 CLASS CERTIFICATION**

16 Plaintiffs’ deadline to file their motion for Rule 23 class certification expired
17 ***over two months ago***. Their failure to do so is, in and of itself, a valid basis to require
18 that their FAC be amended to eliminate the putative class action allegations and/or to
19 strike those allegations.

20 For example, in *Burkhalter v. Montgomery Ward and Co., Inc.*, 676 F.2d 291
21 (8th Cir. 1982), the district court directed the plaintiff to file his motion for class
22 certification by November 1, 1979. *Id.* at 294. However, by January 10, 1980, he had
23 failed to do so. *Id.* “As a result, the court struck the class allegations from the
24 complaint.” *Id.* The Eighth Circuit recognized that “the district court had the power
25 to establish reasonable times for the filing of documents and if those deadlines were
26 not met, the court had the discretion to dismiss all or part of the suit.” *Id.* The plaintiff
27 had over two months to file his motion for class certification (which was even less time
28 than the Court afforded Plaintiffs here), but he failed to do so. *See id.* As such, the

1 dismissal of the class allegations was proper in *Burkhalter*—and it is similarly proper
2 here. *Id.* at 294-295.

3 To that point, the Court entered its Scheduling Order on August 2, 2024. Dkt.
4 #79. The Scheduling Order *expressly states* that “[t]he motion hearing cutoff date
5 applies to all nondiscovery motions except: (1) motions for class certification, *which*
6 *shall be filed in accordance with the deadline set forth in the Court’s Civil Standing*
7 *Order....*” *Id.* at 2:5-8 (emph. added). The Court’s Civil Standing Order, in turn, states
8 that “plaintiff(s) shall file a motion for class certification no later than 100 days from
9 the date of the scheduling conference. This deadline will be continued only upon a
10 showing of due diligence and good cause.” Standing Order at 6:19-23.

11 Conservatively using the later date on which the Scheduling Order was entered
12 (rather than the earlier date on which the Scheduling Conference was originally
13 scheduled to take place), Plaintiffs’ deadline to file their motion for class certification
14 was *no later than* **November 10, 2024**. See Dkt. #79 at 2:5-8 & Standing Order at
15 6:19-22. But they did not file a motion for class certification by that date—nor did
16 they ever seek an extension of their deadline to do so. See, e.g., *Grandson v. Univ. of*
17 *Minn.*, 272 F.3d 568, 574 (8th Cir. 2001) (district court did not abuse its discretion in
18 striking plaintiffs’ class allegations where plaintiffs provided no credible excuse for
19 their failure to timely seek certification or request for an extension before their deadline
20 to do so).

21 As noted above, Rule 23(d)(1)(D) allows a court to “give clear definition” to a
22 class action and “determine as early in the proceedings as practicable” whether class
23 allegations can be maintained. Because Plaintiff failed to raise the issue of class
24 certification, and Rule 23(c)(1)(A) requires the consideration of class certification
25 issues “at as early practicable time after a person sues or is sued as a class
26 representative,” it falls to MFS to raise the issue with the Court now. Plaintiffs’
27 deadline to file their motion for class certification expired *over two months ago*, and
28 their failure to move for class certification is a valid basis on its own to require that

1 their putative class action allegations be eliminated by amendment or stricken. *See*,
2 *e.g.*, *Keating v. Nordstrom, Inc.*, 2019 WL 7160382, at *3 & n.25 (D. Alaska Dec. 4,
3 2019) (citing cases) (“Courts routinely strike class allegations where plaintiffs failed
4 to comply with class certification motion deadlines.”); *Gray v. Marathon Petroleum*
5 *Logistics Servs., LLC*, 2021 WL 2808695, at *3 (C.D. Cal. July 2, 2021) (Walter, J.)
6 (dismissing class allegations based on plaintiff’s failure to timely file a motion for class
7 certification).

8 Not only did Plaintiffs fail to file their motion for class certification, but they
9 have not been diligent in pursuing their putative class action claims. To that point,
10 notwithstanding that their FAC was filed *some ten months ago* in March 2024, they
11 have never *initiated* written discovery regarding their individual *or* putative class
12 action claims in this action. Kane Decl., ¶ 7. Plaintiffs served a single deposition
13 notice on January 8, 2025—only *after* MFS sought to confer with them about this
14 Motion and *after* they had filed their RFD asking the Court to dismiss their claims
15 against MFS. *Id.*, ¶ 5 & Exh. C. In short, apart from parroting the requirements of
16 Rule 23 in their FAC, *see* Dkt. #24, ¶¶ 67-77, Plaintiffs have done *nothing* to properly
17 represent the interests of putative class members with respect to their purported class
18 action claims under California state law. Their “lack of due diligence is a strong
19 indication that [they] and [their] attorneys will not ‘fairly and adequately protect the
20 interests of the class.’” *Robertson v. FedEx Nat. Ltl, Inc.*, 2010 WL 10020690, at *6
21 (C.D. Cal. Jan. 5, 2010) (Fischer, J.). “For this reason, courts regularly refuse to certify
22 a class where plaintiffs delay in seeking certification.” *Id.*⁶

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25 ⁶ *See also, e.g., Sterling v. Env'tl. Control Bd. Of City of New York*, 793 F.2d 52,
26 58 (2d Cir. 1986) (“[A] party’s failure to move for class certification until a late date
27 is a valid reason for denial of such a motion.”); *Rocha*, 2007 WL 8398819, at *3 (citing
28 cases) (“There are strong ... policy concerns [implicated when a plaintiff fails to file a
timely certification motion]. Plaintiffs’ failure to seek class certification in a timely
fashion is a strong ‘indic[ation] that plaintiffs are not adequately and fairly representing
the interests of the absent class.’”); *Weiss v. La Suisse*, 161 F.Supp.2d 305, 319
(S.D.N.Y. 2001) (“Assuming *arguendo* that class certification would be appropriate, I
am constrained to deny the motion because of plaintiffs’ tardiness in making it.”).

1 “Fundamental fairness toward defendants also counsels against leniency for
2 plaintiffs who fail to move for class certification in a timely fashion.” *Rocha*, 2007
3 WL 8398819, at *3 (emph. added). The *McCarthy* court observed that “defendants are
4 entitled to ascertain at the earliest practicable moment whether they will be facing a
5 limited number of known, identifiable plaintiffs or whether they will instead be facing
6 a much larger mass of generally unknown plaintiffs.” *McCarthy*, 741 F.2d at 1411-12.
7 In addition, delay may undercut the judicial efficiency class actions are designed to
8 achieve. *Id.* at 1412 (noting that the rules regarding the timely filing of class
9 certification motions “foster the interests of judicial efficiency, as well as the interests
10 of the parties, by encouraging courts to proceed to the merits of a controversy as soon
11 as practicable”). As such, in *McCarthy*, “it was within the District Court’s broad
12 discretion to rely upon the untimeliness of the class certification motion, and the
13 unfavorable consequences caused by the delay, as grounds for denying certification.”
14 *Id.*; see also *Rocha*, 2007 WL 8398819, at *6 (denying plaintiffs leave to file a belated
15 certification motion and striking class allegations from complaint).

16 Because Plaintiffs failed to file a timely motion for class certification, “there is
17 no set of circumstances under which plaintiffs could succeed on their putative class
18 claims.” *Rocha*, 2007 WL 8398819, at *6. As such, Plaintiffs should be required to
19 amend their FAC to eliminate the putative class action allegations therein pursuant to
20 Rule 23(d)(1)(D), see, e.g., *Bantolina v. Aloha Motors, Inc.*, 75 F.R.D. 26, 31 (D. Haw.
21 1977) (“Rule [23(d)(1)(D)] provides a procedure to purge a complaint and action of an
22 improper class action without ‘dismissing’ the ... action.”), and/or the Court should
23 strike those allegations pursuant to Rule 12(f), see, e.g., *Grandson*, 272 F.3d at 574
24 (district court did not abuse its discretion by striking class allegations where plaintiffs
25 failed to move for class certification in a timely fashion); *Burkhalter*, 676 F.2d at 294
26 (affirming the district court’s decision to strike class allegations for failure to file a
27 motion for class certification by the court-ordered deadline). Plaintiffs’ claims should
28 proceed, if at all, only on an individual basis.

1 **IV. CONCLUSION**

2 For all of the foregoing reasons, MFS respectfully requests that the Court grant
3 this Motion in its entirety.

4
5 Dated: January 17, 2025

BAKER & HOSTETLER LLP

6 By: /s/ Matthew C. Kane

7 Matthew C. Kane
8 Sylvia J. Kim
9 Amy E. Beverlin
10 Kerri H. Sakaue

11 Attorneys for Defendant
12 McLANE FOODSERVICE, INC.

13
14 **CERTIFICATION**

15 The undersigned, counsel of record for Defendant, hereby certifies that this brief
16 contains 3,592 words, which complies with the word limit of L.R. 11-6.1.

17
18 /s/ Matthew C. Kane

19 Matthew C. Kane
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DECLARATION OF MATTHEW C. KANE

I, MATTHEW C. KANE, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a Partner with Baker & Hostetler LLP, attorneys of record for Defendant McLane Foodservice, Inc. (“MFS”). I make this declaration in support of MFS’s Motion to Require Amendment of Plaintiffs’ First Amended Complaint to Eliminate Putative Class Allegations or, Alternatively, for an Order Striking the Same (the “Motion”). I have personal knowledge of all that is set forth herein and, if called upon to testify, I could and would do so competently.

2. On December 20, 2024, MFS served each of Plaintiffs with deposition notices, setting their depositions for January 23 and 24, 2025, respectively, and with MFS’s identical Second Sets of Interrogatories, Requests for Admission, and Requests for Production of Documents. Plaintiffs’ responses thereto are due not later than January 21, 2025. *See* Fed. R. Civ. P. 6. MFS served this discovery to prepare its motion for summary judgment on Plaintiffs’ state law claims pending in this action, which must be heard by April 17, 2024. *See* Dkt. #79 (Scheduling Order).

3. On December 27, 2024, pursuant to L.R. 7-3, I sent a letter to Plaintiffs’ counsel detailing the grounds for MFS’s then-contemplated motion to require amendment of Plaintiffs’ First Amended Complaint (“FAC”) to eliminate Plaintiffs’ putative class action allegations or for an order striking the same. A true and correct copy of my December 27, 2024, letter is attached hereto as **Exhibit A**. As set forth therein, MFS’s then-contemplated motion was to be based on Plaintiffs’ failure to file a motion for class certification by the deadline set by the Court’s Scheduling and Standing Orders, which was no later than November 10, 2024.

4. On December 31, 2024, Plaintiffs’ counsel responded to my L.R. 7-3 letter via email. In their response, Plaintiffs’ counsel seemingly disputed that Plaintiffs’ class certification deadline had elapsed and refused to amend the FAC to eliminate the class allegations. A true and correct copy of Plaintiffs’ counsel’s

1 December 31, 2024 email is attached hereto as **Exhibit B**.

2 5. On January 6, 2025 – just *6 days* after refusing to amend their FAC to
3 dismiss their putative class action allegations – Plaintiffs filed a Request for Dismissal
4 Without Prejudice Pursuant to Federal Rule of Civil Procedure 41(a)(2) (the “Dismissal
5 Request”). Dkt. #106. On January 7, 2025, MFS filed a response the Dismissal
6 Request, and Plaintiffs filed a “Reply” thereto that same day. *See* Dkt. #107, #108. On
7 January 10, 2025, the Court denied Plaintiffs’ Dismissal Request and ordered MFS to
8 file the Motion by no later than January 24, 2025. Dkt. #109.

9 6. On January 8, 2024, two days after Plaintiffs had filed their Dismissal
10 Request and while that request was pending with the Court, Plaintiffs served MFS with
11 a Notice of Taking Fed. R. Civ. P. 30(b)(6) Deposition (the “Deposition Notice”),
12 purporting to notice MFS’s deposition on patently objectionable topics related to their
13 putative class action claims for January 21, 2025. A true and correct copy of Plaintiffs’
14 Deposition Notice is attached hereto as **Exhibit C**.

15 7. Other than the belatedly served Deposition Notice, Plaintiffs have never
16 served any written discovery on MFS regarding their individual *or* putative class action
17 claims in this action. Plaintiffs have also never initiated the required conferral pursuant
18 to L.R. 7-3 for a motion for class certification.

19 8. On January 14, 2025, Plaintiffs’ counsel belatedly advised MFS’s counsel
20 by email that Plaintiffs do not intend to pursue their class action claims, and a true and
21 correct copy of the email is attached hereto as **Exhibit D**. However, Plaintiffs have
22 not proposed a further amended complaint to limit their claims to only individual
23 claims, and, as noted above, on January 8, 2025, they had propounded eleventh-hour
24 discovery directed to their putative class action claims, and as reflected in their January
25 14, 2025 email, their counsel has reiterated their intent to proceed with that discovery.

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27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct.

3 Executed January 17, 2025, at Los Angeles, California.

4
5 /s/ Matthew C. Kane
6 MATTHEW C. KANE
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Matthew C. Kane
direct dial: 310.442.8818
mkane@bakerlaw.com

December 27, 2024

VIA EMAIL

Aashish Y. Desai
Adrienne De Castro
Desai Law Firm, P.C.
3200 Bristol Street, Suite 650
Costa Mesa, CA 92626
aashish@desai-law.com
adrienne@desai-law.com

Re: *Jordan Orozco Madero, et al. v. McLane Foodservice, Inc.*
U.S.D.C. Central District Case No. 5:24-cv-00073-KK-DTB

Dear Counsel:

Pursuant to Local Rule 7-3, we write on behalf of Defendant McLane Foodservice, Inc. (“MFS”) to initiate a meet and confer with Plaintiffs Jordan Orozco Madero and Esteban Orosco about MFS’s intended motion to require amendment of the First Amended Complaint (“FAC”) to eliminate Plaintiffs’ putative class action allegations or for an order striking the same (the “Motion”). The grounds for the Motion, as presently contemplated, are set forth herein.

On August 2, 2024, the Court entered its Civil Trial Scheduling Order (the “Scheduling Order”) [Dkt. #79], in which it set a motion hearing cut-off date of April 17, 2025. However, the Scheduling Order *expressly states* that “[t]he motion hearing cutoff date applies to all nondiscovery motions except: (1) motions for class certification, which shall be filed in accordance with the deadline set forth in the Court’s Civil Standing Order....” Dkt. #79 at 2:5-8 (emph. added). Per the Court’s Civil Standing Order, “plaintiff(s) shall file a motion for class certification no later than 100 days from the date of the scheduling conference. This deadline will be continued only upon a showing of due diligence and good cause.” Standing Order at 6:19-23.¹

¹ The Court’s Civil Standing Order was filed in this action on January 19, 2024 [Dkt. #9]. However, on April 25, 2024, the Court entered a text-only order advising the parties that it had “updated its procedures in civil cases” and directing the parties to the Court’s updated Civil Standing Order available on the Court’s website at <https://www.cacd.uscourts.gov/sites/default/files/documents/KK/AD/KK%20Civil%20Standing%20Order.pdf>. See Dkt. #30.

Aashish Y. Desai
Adrienne De Castro
December 27, 2024
Page 2

On July 19, 2024, the Court vacated the Scheduling Conference in this action, originally scheduled for July 25, 2024. *See* Dkt. #47, #71. Instead, the Court issued its Scheduling Order on August 2, 2024. Conservatively using the date on which the Scheduling Order was entered (rather than the date on which the Scheduling Conference was originally scheduled to take place), Plaintiffs' deadline to file their motion for class certification pursuant Fed. R. Civ. P. 23 ("Rule 23") was no later than **November 10, 2024**. *See* Standing Order at 6:19-22. But Plaintiffs did not file a motion for class certification by that date—and, in fact, they did not initiate any required conferral pursuant to L.R. 7-3 for such a motion, and they have not even *initiated* discovery regarding their individual *or* putative class action claims in this action.

Under Rule 23(d)(1)(D), a court may issue an order to "require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly." Rule 23(d)(1)(D) allows a court to "give clear definition" to a class action and "determine as early in the proceedings as practicable" whether class allegations can be maintained. Fed. R. Civ. P. 23(3)(1)(D) advisory committee's note to 1966 amendment. Additionally, Rule 23(c)(1)(A) requires the consideration of class certification issues "at as early practicable time after a person sues or is sued as a class representative[.]" The basis for this rule is obvious: "Fundamental fairness, as well as the orderly administration of justice requires that defendants haled into court not remain indefinitely uncertain as to the bedrock litigation fact of the number of individuals or parties to whom they may ultimately be held liable for money damages." *McCarthy v. Kleindienst*, 741 F.2d 1406, 1411-12 (D.C. Cir. 1984).

Here, Plaintiffs' deadline to file their motion for class certification expired ***well over one month ago***, and their failure to timely move for class certification is, in and of itself, a valid basis to require that their FAC be amended to eliminate the putative class action allegations or for the Court to enter an order striking the same. *See, e.g., Burkhalter v. Montgomery Ward and Co., Inc.*, 676 F.2d 291 (8th Cir. 1982) (affirming district court's striking of class allegations because of the plaintiff's failure to comply with court order setting deadline for filing of motion for class certification); *Grandson v. Univ. of Minn.*, 272 F.3d 568, 574 (8th Cir. 2001) (district court did not abuse its discretion in striking plaintiffs' class allegations because they provided no credible excuse for their failure to timely file a class certification motion or request for an extension before the deadline set forth in the local rules); *Keating v. Nordstrom, Inc.*, 2019 WL 7160382, at *3 & n.25 (D. Alaska Dec. 4, 2019) (citing cases) ("Courts routinely strike class allegations where plaintiffs failed to comply with class certification motion deadlines."); *Gray v. Marathon Petroleum Logistics Servs., LLC*, 2021 WL 2808695, at *3 (C.D. Cal. July 2, 2021) (Walter, J.) (dismissing class allegations based on plaintiff's failure to timely file a motion for class certification).²

² *See also, e.g., Sterling v. Env'tl. Control Bd. Of City of New York*, 793 F.2d 52, 58 (2d Cir. 1986) ("[A] party's failure to move for class certification until a late date is a valid reason for denial of such a motion."); *Robertson v. FedEx Nat. Ltl. Inc.*, 2010 WL 10020690, at *6-7 (C.D. Cal. Jan. 5, 2010) (Fischer, J.) (striking class allegations from complaint) ("Plaintiff's lack of due diligence is a strong indication that he and his attorneys will not 'fairly and adequately protect the interests of the class.' ... For this reason, courts regularly refuse to certify a class where plaintiffs delay in seeking certification.").

Aashish Y. Desai
Adrianne De Castro
December 27, 2024
Page 3

* * * * *

Please let us know by close of business on **January 3, 2025** whether Plaintiffs will amend their FAC to eliminate their putative class action allegations, or when you would like to further discuss the intended Motion on or before that date. If we do not hear from you by close of business on January 3, 2025, we will assume that Plaintiffs refuse to do so, and MFS will proceed to file its contemplated Motion.

Thank you for your attention to and consideration of the foregoing. Nothing herein is intended or should be construed as any type of express or implied waiver or limitation of any of MFS's rights, claims, remedies, or defenses in connection with this matter, all of which are hereby fully and expressly reserved, or as any type of express or implied admission of any fact or matter in connection with this matter, all of which are hereby expressly, generally, and specifically denied and disputed.

Sincerely,

BAKER & HOSTETLER LLP



Matthew C. Kane

cc: Sylvia J. Kim
Amy E. Beverlin
Kerri H. Sakaue

From: adrianne.desai-law.com
To: [Kane, Matthew](#)
Cc: aashish.desai-law.com; [Kane, Matthew](#); [Kim, Sylvia](#); [Beverlin, Amy](#); [Sakaue, Kerri](#); [Patton, Tyler](#); sonia.desai-law.com
Subject: Re: Jordan Orozco Madero, et al. v. McLane Foodservice, Inc.
Date: Tuesday, December 31, 2024 3:52:29 PM

[External Email: Use caution when clicking on links or opening attachments.]

Dear Matt –

We write in response to your December 27 meet and confer. We will not amend our complaint to eliminate the class allegations.

First, as McLane well knows, per its own request, the Court stayed any ruling (and therefore any discovery) on Plaintiffs’ motion for conditional certification. The Court ordered the parties to first adjudicate and conduct discovery on the issue of the McLane’s motor carrier exemption defense which they did over the course of several months. Given the Court’s order limiting discovery on this issue, Plaintiffs did not and could not conduct discovery on either their FLSA collective action claims or any class claims. This would be procedurally backwards and pointless since the Court expressly phased the litigation to address McLane’s defense first. This is the exact phasing that McLane requested.

Second, when the Court ultimately ruled on the parties’ cross-motions for summary judgment and granted Defendant’s motion, it asked the parties to brief the issue of “why this court should retain jurisdiction over the instant action.” Doc. 97. Per the Court’s order, the parties submitted briefing by October 24, exhibiting that we disagree as to whether the Court even has jurisdiction over this case. The Court has still not ruled on this issue.

For these reasons, McLane’s anticipated motion is wholly improper and per the Court’s standing order, the Court effectively continued the deadline for filing the motion for class certification by staying any ruling on the Motion for Conditional Certification. The Court phased the discovery to focus on McLane’s defense and issued a 120-day stay on the motion for conditional certification that was even extended through the end of July and has technically, not been lifted by this Court. This stay has prevented Plaintiffs from conducting class discovery in any timely matter. This is especially so since the Court did not rule on the McLane’s exemption defense until October 17, less than a month before any class certification motion needed to be filed. And more importantly, the Court’s jurisdiction over this matter and any class claims remains undecided and unclear. Thus, it would be a waste of judicial resources and time to conduct discovery and file a motion in a Court that no longer has jurisdiction over this matter.

To clarify matters for all the parties, we are willing to file a joint request for ruling on the issue of jurisdiction. Please let me know if you’d like to do this and we can prepare something.

Regards,

Adrianne

Adrianne De Castro
Senior Associate



Costa Mesa Office

3200 Bristol Street, Suite 650 | Costa Mesa, CA 92626
T (949) 614-5830 | F (949) 271-4190

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On Dec 27, 2024, at 3:03 PM, Patton, Tyler <tpatton@bakerlaw.com> wrote:

Counsel,

Please see attached correspondence.

Tyler Patton

Legal Secretary

<image001.png>

1900 Avenue of the Stars | Suite 2700
Los Angeles, CA 90067-4301
T +1.310.442.8894

tpatton@bakerlaw.com

bakerlaw.com

<image002.png>

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<2024.12.27 LR 7-3 Letter re Motion to Require Amendment or to Strike.pdf>

DESAI LAW FIRM, P.C.
Aashish Y. Desai, Esq. (SBN 187394)
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aashish@desai-law.com
adrianne@desai-law.com

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JORDAN OROZCO MADERO and
ESTEBAN OROSCO on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

McLANE FOODSERVICE, INC., a
Texas Corporation, and DOES 1-10,
inclusive,

Defendants.

Case No. 5:24-cv-00073-KK-DTB

Hon. Kenly Kiya Kato

**PLAINTIFFS' NOTICE OF TAKING
FED. R CIV. P. 30(b)(6) DEPOSITION**

DATE OF DEPOSITION:

Date: January 21, 2025

Time: 10:00 a.m. (PT)

Place: Desai Law Firm, P.C.
3200 Bristol Street Ste. 650
Costa Mesa, CA 92626

1 TO DEFENDANTS [DEFENDANTS], AND THEIR ATTORNEYS OF RECORD
2 IN THIS ACTION:

3 PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules
4 of Civil Procedure, Plaintiffs will take the deposition upon oral examination of
5 Defendant, through its designated agent(s).

6 The deposition will commence on **January 21, 2025, at 10:00 a.m.**, at
7 DESAI LAW FIRM, P.C., 3200 Bristol St., Suite 650, Costa Mesa, CA 92626.
8 Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure,
9 Defendant is hereby directed to designate one or more officers, directors, managing
10 agents, or other persons who consent to testify and are most knowledgeable and
11 competent to testify regarding the matters designated below. The following shall
12 apply to the instant depositions(s):

13 **I. DEFINITIONS AND INSTRUCTIONS**

14 Except as otherwise defined or broadened in this notice of deposition, Plaintiff
15 incorporates by reference the definitions set forth in Fed. R. Civ. P. 26 and 30.

- 16 1. Unless otherwise indicated, the terms “Defendant” is used to include all
17 entities, trade names, and subsidiaries operating businesses owned by
18 Defendant.
19 2. Unless otherwise indicated, the term “Plaintiffs” refers to the named Plaintiffs
20 and all putative class members.
21 3. Unless otherwise indicated, the term “truck drivers” or “drivers” shall mean
22 Defendant’s drivers employed in the capacity of truck driver and any other
23 similarly-designated title or similarly-situated person.

24 **II. MATTERS DESIGNATED FOR DEPOSITION TESTIMONY**

25 Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil
26 Procedure, Defendant is hereby directed to designate one or more officers, directors,
27
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managing agents, or other persons who consent to testify and are most knowledgeable and competent to testify regarding the following matters:

1. Defendant's practices, policies, procedures, guidelines, and rules regarding its truck drivers' use of their personal cell phones and any reimbursement for such use, including but not limited to the creation, implementation, and enforcement of such practices, policies, procedures, guidelines, and rules;
2. Defendant's compensation practices, policies, procedures, guidelines, and rules with regard to Defendant's truck drivers, including but not limited to the creation, implementation, and enforcement of such practices, policies, procedures, guidelines, and rules;
3. Defendant's documentation of and record-keeping policies with respect to its drivers' compensation during the liability period;
4. Defendant's practices, policies, procedures, guidelines, and rules with regard to Defendant's truck drivers' paystubs during the liability period;
5. The factual basis supporting any and all affirmative defenses raised in Defendant's Answer to the First Amended Complaint in this matter.

Dated: January 8, 2025

DESAI LAW FIRM, P.C.

By: /s/ Aashish Y. Desai

Aashish Y. Desai
Adrienne De Castro
Attorneys for Plaintiffs

PROOF OF SERVICE
C.C.P. §§ 1013A and 2015.5

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 3200 Bristol Street, Ste. 650, Costa Mesa, California 92626.

On January 8, 2025, I served the foregoing document described as **PLAINTIFFS' NOTICE OF TAKING FRCP 30(b)(6) DEPOSITION** on the interested parties in this action by sending a true copy thereof via e-mail to the addresses listed below:

Counsel for Defendant McLane Foodservice, Inc.:

BAKER & HOSTETLER LLP

Matthew C. Kane, SBN 171829 , mkane@bakerlaw.com

Amy E. Beverlin, SBN 284745, abeverlin@bakerlaw.com

Kerri H. Sakaue, SBN 301043, ksakaue@bakerlaw.com

Sylvia J. Kim, SBN 258363, sjkim@bakerlaw.com

☐ **BY MAIL** – I deposited such envelope in the mail at Costa Mesa, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION** – Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail address above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Sonia Nava
SONIA NAVA

From: adrianne.desai-law.com
To: [Kane, Matthew](#); [Sakaue, Kerri](#)
Cc: [Beverlin, Amy](#); [Kim, Sylvia](#); aashish.desai-law.com; sonia.desai-law.com
Subject: McLane: Depos and Hearings Next Week
Date: Tuesday, January 14, 2025 4:26:22 PM

[External Email: Use caution when clicking on links or opening attachments.]

Dear Matt and All —

I am writing regarding a few matters.

First, I am writing to confirm the depositions we have next week:

- 1) Tuesday, 1/21 at 10a,: Deposition of McLane's corporate witness at our office
- 2) Thursday, 1/23 at 9:30am: Deposition of Esteban Orosco at B&H
- 3) Friday, 1/24 at 9:30am: Deposition of Jordan Madero at B&H

On Thursday, 1/23, we all have a status conference and hearings on your two motions in the McLane State case at 2:00pm. I assume you all are ok with us taking a break at this time so we can attend the conference and hearing virtually.

Second, in light of the Court's Order, we do not intend to move forward with our class claims and will move forward with our clients' individual state law Labor Code claims.

Regards,
Adrianne

Adrianne De Castro
Senior Associate



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